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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of ) MM DOCKET NO. 93-178  
HOWARD B. DOLGOFF ) File No. BPH-911223ME  
MARK AND RENEE CARTER ) File No. BPH-911224MD  
For Construction Permit for a New )  
FM Station on Channel 292A )  
Miramar Beach, Florida )

To: Administrative Law Judge  
John Frysiak

**MASS MEDIA BUREAU'S OPPOSITION**  
**TO REQUEST TO CERTIFY APPLICATION FOR REVIEW**

1. On July 6, 1993, Mark and Renee Carter ("the Carters") filed a Request to certify an application for review to the Commission. The Mass Media Bureau submits the following comments in opposition.

2. The Carters seek Commission review of the Hearing Designation Order in the above-captioned proceeding, DA 93-700, released June 28, 1993 ("HDO"). They argue that the competing application of Howard B. Dolgoff ("Dolgoff") should not have been designated for hearing. Instead, the Carters submit, Dolgoff's application should have been dismissed for violation of the hard look rules, and/or for violation of the contour protection standards of Section 73.215 of the Commission's Rules. However,

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3. The Dolgoff "application" which the Carters refer to is not the application as filed, but, rather, the application as amended. It was only in an amendment as a matter of right that Dolgoff requested processing under Section 73.213(c)(1) of the Commission's Rules. The proposal was not subject to outright dismissal even if it had violated the tenderability requirements of the "hard look" policy because it was an amendment. See Statement of New Policy Regarding Commercial FM Applications that are not Substantially Complete or are Otherwise Defective (Appendix D), 58 RR 2d 166 (1985). Such requirements are specifically intended to detect and eliminate defects in applications at the initial processing stage. The Taber Broadcasting Company of New Mexico, 4 FCC Rcd 7892 (1989).


4. In any event, Dolgoff's amendment was not defective. Under Section 73.213(c)(1), a grandfathered applicant such as Dolgoff need only show that its proposal would emit no more

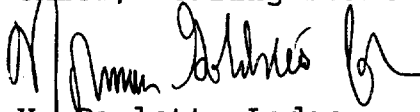
contour will overlap Dolgoff's service contour. The appended staff study confirms that WKNV(FM) operates at 3kW and, as the HDO makes clear, Section 73.213(c)(1) is applied on a station-to-station basis without regard to pending proposals. 1

73.213(c)(1) proposal was contained in an amendment. Thus, even if it had been defective, it would have been returned as a "suicide amendment." See Alegria I, Inc., 5 FCC Rcd 7309 (1990). The original application would have then been processed, since it was acceptable for filing, as originally filed. Thus, grant of the request for certification would not expedite the resolution of this case.

7. In sum, the Carters have not shown that this matter "involves a controlling question of law as to which there is a substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation." Section 1.115(e)(3) of the Commission's Rules.

Respectfully submitted,  
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July 14, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 14th day of July, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Request to Certify Application for Review"** to:

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